IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 11865 of 2007(K)

PETITIONER:

V.V.MANIKKAM,AGED 70 YEARS,VAIKATH, UDINOOR,KASARGOD.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:
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1. **ASSISTANT ENGINEER,ELECTRICAL SUB DIVISION,KSEB,PILLICODE.**

2. **APPYAL KANNAN,S/O.KARATHAMBU, VAIKATH,UDINOOR,KASARGOD.**

3. **THEKKENKANDATHIL KUNJIKANNAN, VAIKATH,UDINOOR,KASARGOD.**

ADDL.R4 AND R5 IMPLEADED

4. **C.K.RAGHAVAN, VAIKATH HOUSE, UDINOOR, KASARAGOD.**

5. **K.V.BALAKRISHNAN ACHARY, VAIKATH HOUSE, UDINOOR, KASARAGOD**

ARE IMPLEADED AS ADDL.R4 AND R5 AS PER ORDER DT. 11.4.07 IN IA. 5376/07.

BY ADV. SRI.A.JAYASANKAR
SRI.MANU GOVIND
SRI.A.JAYAKUMAR , SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.11865/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SETTLEMENT DEED NO.799/69 SRO, TRIKARIPUR

EXT.P2:- COPY OF THE ELECITRICITY CONNECTION A SKETCH.

EXT.P3:- COPY OF THE NOTICE RECEIVED BY THE PETITIONER BEARING REF. NO.34256/2006/D1 DT. 5.3.07.

EXT.P4:- COPY OF THE CRYPTIC ORDER BEARING NO.D1-34256/2006 DT. 23.3.07.

EXT.P5:- COPY OF THE SKETCH

RESPONDENTS EXHIBITS

EXT.R3(A):- SKETCH SHOWING LIE OF PROPERTY AND LINES ALREADY DRAWN.

/TRUE COPY/

P.A. TO JUDGE

tss

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.11865 of 2007

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Dated this the 12th day of July, 2007.

JUDGMENT

The petitioner is challenging Ext.P4 order issued by the Additional District Magistrate approving drawal of electric line for giving electric connection to additional respondents 4 and 5 on the ground that ADM does not have the authority to approve alternate route suggested by the parties in the course of proceedings before him

2. I heard counsel appearing for the petitioner, Standing Counsel for KSEB and counsel appearing for respondents 2 and 3. It is conceded that Ext.R3(a) sketch produced by respondents 2 and 3 reflect the true state of affairs. The house of the beneficiaries are adjoining properties located beneath the properties of respondents 2 and 3. The line originally proposed was through the boundary of the properties of respondents 2 and 3 and would have been drawn from D to C as shown in the sketch. However, respondents 2 and 3 raised objection stating that the drawal of line in the route proposed by the first respondent would lead to cutting of large number of yielding trees like coconut, jack tree, mango tree etc. Simultaneously, the third respondent expressed consent to permit the line to be drawn over the

southern boundary of his property i.e. from A to B and then to draw the line through the property of beneficiaries through B and C. In fact, this requires drawal of line from post Y which stands installed in the property of the petitioner and three metres line will pass through the property of the petitioner. The ADM approved the alternate route suggested by respondents 2 and 3 which resulted in grievance to the petitioner in as much as three metres of electric line will pass over his property i.e. from Y to A as shown in the sketch. Therefore, petitioner has filed this W.P. against Ext.P4 order approving the alternate route as against the route proposed by first respondent.

3. The first contention raised by counsel for petitioner is that the ADM has no authority to consider alternate route after rejecting the proposal of the KSEB. I am unable to accept this contention because the power conferred on the public officer namely, the ADM under Section 16 (1) of the Indian Telegraph Act read with Section 164 of the Indian Electricity Act is not just to consider the proposal by the KSEB, but to accept it or reject it. So long as the Act confers power on the ADM to approve electric line over private property, it pre-supposes that an applicant for electric connection is entitled to the same, no matter whether it involves loss or inconvenience to other land owners. Therefore, exercise of

jurisdiction under the statute involves framing of a scheme by the ADM to give connection to the beneficiary by causing least inconvenience to least number of land owners. When a new line is drawn for giving connection to one or two applicants, it is the duty of the ADM to keep in mind future or projected need of the other applicants in the area and if he finds that an alternate route proposed will lead to benefits to others in the area who are applicants for electric connection in the waiting list, he is free or rather bound to adopt such a course as the jurisdiction under the above provisions of the statute has to be exercised in a bonafide manner to advance public interest. In fact, even if petitioners argument that the ADM's jurisdiction is either to accept or reject the proposal of KSEB is accepted, still what is required after rejection of the proposal is to forward a fresh proposal in the alternate route to the very same ADM for his consideration and approval. So long as the ADM has the authority to approve line over private properties to give connection to applicants, it is open to him to consider the proposal by the KSEB with reference to alternate proposals raised by parties simultaneously and those initiated by him suo moto on inspection and the ADM is absolutely free to decide for himself the route over which line has to be drawn causing least inconvenience to least number of land owners, no matter the Electricity Board has not made such a proposal or not.

In other words, once a reference is made by KSEB under Section 16(1) of the Indian Telegraph Act read with Section 164 of the Indian Electricity Act, the ADM is absolutely free to approve a route for giving connection to the beneficiaries in deviation from the route proposed by KSEB. Therefore, this contention of the petitioner is rejected.

4. In this case I find the ADM has considered the original proposal and turned it down on the ground that the line in the approved route if drawn will lead to cutting of large number of useful trees in the properties of respondents 2 and 3. In fact, the route approved by him as stated in Ext.P4 will eventually lead to easy connections to large number of persons in the area who will be eventually applying for electric connection. Moreover, the approved line essentially passes through the property of the second respondent and of the beneficiaries themselves over which petitioner cannot have any grievance. The line as such passing over petitioner's property is only three metres against which petitioner cannot have any serious grievance. However, on going through the sketch produced before the Court, I find if the pole Y is shifted from petitioner's property to the boundary of his property and second respondent's property, one post proposed at A could probably be avoided and line could be drawn through the boundary of properties of the petitioner and the second

respondent i.e. by shifting electric post Y to the boundary thereby avoiding post in the position A in the property of the second respondent. The W.P. is accordingly disposed of upholding Ext.P4 but with direction to the first respondent to shift the pole from Y to A and avoid one pole if possible and give connection to the beneficiaries without any delay.

C.N.RAMACHANDRAN NAIR
Judge

pms